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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,897	09/23/2003	Raoul G. Fima		2495

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William B. Noll
402 Anemone Street
Panama City Beach, FL 32413

EXAMINER

MASINICK, MICHAEL D

ART UNIT	PAPER NUMBER
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2128

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09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/668,897

Applicant(s)

FIMA, RAOUL G.

Examiner

Michael D. Masinick

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7 and 9-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) 1, 3-7, 9-18, and 20 is/are rejected.
7) ☒ Claim(s) 19 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claims 1, 3-7, 8-20 are pending in this application. Claims 2 and 8 were cancelled in the amendment dated 7/11/2008.

Response to Amendment/Arguments

Applicant makes reference to amending claims 13 and 16 ("insofar as the examiner may propose to apply same to the amended claims"). No amendments have been made to these claims.

Applicant states: "...Faulk does not teach not suggest a system for monitoring and controlling water consumption, but rather a system to detect leakage which allows for a minimal flow after detection before shut-off". Examiner disagrees with this statement. a leakage detection system is most certainly a "system for monitoring and controlling water consumption" as a leak leads to the use of water (consumption). While it is clear that Faulk is a different invention than applicant is attempting to patent, it still very clearly reads on the claim language of claims 13, 14, and 16.

Applicants arguments regarding the "incompatibility" of the references do not appear to take into account the Supreme Courts recent decision in the KSR Vs. Teleflex case regarding obviousness rejections. It is simply not appropriate to argue that the two references can not be combined if they do not discuss the same subject matter. Examiner has given a rejection with detailed explanation of how it relates to the recent KSR decision. Specifically, the use of a known technology in a different application should result in a finding of obviousness if one of

ordinary skill in the art at the time of invention would have seen the benefit of such a combination. Likewise, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Applicant has provided no rational arguments regarding why one of ordinary skill would not have been able to combine these references, only accusations that they couldn't or wouldn't have been combined.

1. With regard to claim 4, applicant's suggestion that this is hindsight reasoning is clearly based on arguments that may or may not have been valid before the KSR decision, but are certainly not valid now. Evans shows a system where a pressure sensor is monitored to reach a predetermined set point, in the exact same manner as claimed. Again, applicant only suggests that this is hindsight reconstruction but makes no effort to explain why one of ordinary skill wouldn't have seen it obvious to use such a water pressure sensing system. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).
2. These same arguments are given with claim 18. It is not necessary for a reference to teach how to "use a network interface to allow the system of applicant to be programmed

remoted” when remotely programmed systems are so commonly used (as shown by the prior art).

3. All art rejections are maintained as previously cited with slight modifications for claim amendments.

Claim Rejections - 35 USC § 112

4. Claims 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically the term “habital” is not used in the specification as originally filed and the meaning of this term is unclear. Examiner assumes it to mean “able to be inhabited”. Claim 14 is given the same art rejection as previously given.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 13, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,568,825 to Faulk.

7. Referring to claims 13 and 16, Faulk shows a method for monitoring and controlling water consumption, comprising: generating signals indicative of a water consumption parameter sensed from a water-based system; receiving the generated signals to monitor the water consumption parameter; operating a fluid control device for limiting the water consumption in response to the received signal; and information processing of the received signal providing a communication interface for interpreting signals (Claim 1, parts a, b, c, and figure 1).
8. Referring to claim 14, Faulk shows a method as recited in claim 13, wherein the water-based system resides in a habital structure, requiring monitoring and control of the water consumption thereof (Column 3, line 12 – “home or building”).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3, 5-7, 9-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,568,825 to Faulk et al in view of U.S. Patent No. 5,956,248 to Williams et al.
11. This is an alternative 103 rejection for claims 13, 14, and 16.
12. Referring to claim 1, 13, and 16, Faulk shows a system for monitoring and controlling water consumption, comprising: a sensor for monitoring a water consumption parameter in a

water-based system and for generating signals indicative of the operation thereof; an interface for receiving signals from the sensor; and a fluid control device operable with the interface module for limiting the water consumption in the water-based system. These are all clearly shown in claim 1, parts A, B, C – and figure 1, of Faulk.

13. Faulk does not specifically show that the module is an interface module to be entered into a power panel (and in regard to newly added claim elements of claims 1, Faulk does not show a processor residing in the power panel, the processor being in communication with the interface module for interpreting signals from the sensor).

14. Williams shows an irrigation controller where individual modules, each assigned to a valve, are attached to a main controller BUS (motherboard), a processor residing in the power panel, the processor being in communication with the interface module for interpreting signals from the sensor. See specifically column 4, line 66 through Column 5, line 39.

15. The concept of splitting a control system into "modules" is well known. Modules allow for both cost savings when creating a system (ability to customize and not purchase extra unneeded functionality), for expandability if needed in the future, and for easy replacement if a single module fails or is destroyed.

16. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the concept shown in Faulk of having a sensing device, interface, and control system to control water consumption with the power panel and interface module system of Williams because of the reasons stated above (Shown in Williams in Column 6, lines 51-68).

17. The recent KSR vs. Teleflex decision by the U.S. Supreme Court states that the "Use of known technique to improve similar devices in the same way" should result in a finding of obviousness.

18. In this case, the basic concept of sensing a water consumption parameter, receiving the signal, and controlling a valve based on calculations made from that signal is known from Faulk. The use of a module system with a power panel and communication BUS is known from Williams. Williams improved the previous irrigation controller systems by breaking the control system into modules that were easily replaceable and expandable. The same improvements can be made to the system of Faulk to arrive at the claimed invention, thus a finding of obviousness must be made.

19. Referring to claim 3, Faulk shows wherein the sensor comprises a fluid flow sensor to sense the water flow within a component of the water-based system (InFlow Sensor 30).

20. Referring to claim 5, Williams shows wherein the fluid control device comprises a valve in a water supply line of a component of the water-based system (Column 2, "controller 2" shows valves).

21. Referring to claim 6, Faulk wherein the interface module controls the fluid control device for disconnecting a water or energy source from the water-based system (Abstract – "Shutting off flow").

22. Referring to claim 7, Faulk shows wherein the processor (read by examiner to be the interface module – note 112 rejection above) receives the signal from the sensor, and in response

thereto, communicates with the interface module to close the valve in the water supply line (abstract).

23. Referring to claims 9-11, Williams shows a motherboard with a communications port, an "information port", and configuring the module by a remote computer via the information port (Columns 4 and 5 show the programming and communications connections relating to the modules. It should be noted that column 3 also incorporates by reference patents 5,262,936 and 5,272,620 which are typical controllers based on microprocessors).

24. Referring to claim 17, Williams shows wherein the processor is in a housing providing a circuit box for receiving the at least one sensor and receiver, each of the at least one sensor or receiver acting as a circuit breaker of the monitored water-based system to protect from malfunction of the water-based system. Examiner notes that the specification is not clear as to what is meant by this claim language. Specifically, the specification shows a variety of sensors placed at or under the device being monitored - so the sensors can't be placed inside the housing with the receiver in a common area. Williams clearly shows a housing for protection of the receiving circuitry to receive signals from an external sensor. Appropriate explanation is required if the claim language is maintained.

25. Referring to claim 15, Faulk shows a toilet being monitored. A tank-less toilet is a type of toilet and would have been obvious to monitor using the system of Faulk/Williams as it is a water using device.

26. Referring to claim 20, Williams shows a motherboard for receiving said processor, the motherboard having a connection for electronically communicating with one or more processors on other motherboards. It has been shown above the Williams contains a processor. All

computer devices inherently must have a motherboard in order to use the functionality of the processor.

27. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,568,825 to Faulk et al in view of U.S. Patent No. 5,956,248 to Williams et al as shown above and further in view of U.S. Patent No. 6,195,002 to Evans Jr. et al.

28. Evans shows wherein the sensor comprises a pressure sensor connected to sense the pressure inside a component of the water-based system to generate an output signal when the sensor pressure exceeds a predetermined threshold.

29. Pressure sensing is well known in the control field and it would have been obvious to one of ordinary skill in the art to include a pressure sensor in the system of Faulk because "Low and/or high pressure sensors are coupled to main air-or water-carrying conduits to detect if the fluid pressure within such conduits drops below or rises above an acceptable, predetermined level" (Evans, paragraph 7).

30. Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,568,825 to Faulk et al in view of U.S. Patent No. 5,956,248 to Williams et al as shown above and further in view of U.S. Patent No. 6,061,603 to Papadopoulos et al.

31. Papadopoulos shows the use of network (specifically internet) communications with regard to controlling devices. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a network interface to allow the system to be programmed

remotely and allow the system to output data to an external user display.

Allowable Subject Matter

Claim 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

32. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D. Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

***/Michael D Masinick/
Primary Examiner, Art Unit 2128***